IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl..No. 4391 of 2007()

CRIME NO.106 OF 2005 OF VAZHAKULAM POLICE STATION

: PETITIONER/ACCUSED

BINEESH, AGED 36 YEARS,
S/O.DHARMAN, MANDAKATHINGAL HOUSE,
VETTUKAD DESOM, P.O.KOONAMMOOCHI, THRISSUR.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: STATE

SATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4391 of 2007

Dated this the 20th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused in a crime. According to the defacto complainant, the petitioner runs a chit claiming the same to be a registered chit. There is no required registration for the chitty at all, he now realises. The defacto complainant has been induced to subscribe to a chit on the basis of false representations made. He had remitted Rs.7,000/- (Rupees Seven thousand only). The amount has not been returned. The chit is not being run now. In these circumstances, he came to the police to complain of the fraud practised on him by the accused persons including the petitioner. Crime has been registered under Section 420 I.P.C. Investigation is in progress.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is true that there has been an obstruction in the running of the chitty because of certain unforeseen circumstances. The petitioner was involved in a murder case and consequently he has not been able to run the chit as expected. A Receiver has been appointed for the chitty company also. The petitioner is being harassed unnecessarily with such prosecution. The petitioner apprehends that the police, on account of objectionable

political motives, may vex and harass him by unnecessarily arresting him. In these circumstances, it is prayed that directions under Section 438 Cr.P.C may be issued.

3. The learned Public Prosecutor opposes the application. All the elements of the offence of cheating are clearly made out, it is submitted. The learned Public Prosecuto,r in these circumstances, submits that this is not a fit case where direction under Section 438 Cr.P.C can or ought to be issued in favour of the petitioner. The petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate. He must then seek regular bail, it is submitted.

4. Having considered all the relevant inputs, I am satisfied, that appropriate directions can be issued to ensure that the petitioner appears before the learned Magistrate and is given an opportunity to seek regular bail.

5. In the result, this application for anticipatory bail is allowed in part. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 27.07.07. He can apply for bail. Notice can be given to the prosecutor even prior to such surrender. The learned Magistrate shall consider the application for bail of the petitioner and application

for custody, if any, of the investigator and pass appropriate orders on such applications on the date of surrender itself, unless there are compelling reasons. The petitioner shall abide by such orders of the learned Magistrate;

ii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iii) If the petitioner were arrested prior to his surrender on 27.07.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 27.07.07.

(R.BASANT, JUDGE)

rtr/-